A

PP

v.

AROKIASAMY ALPHONSO

B

COURT OF APPEAL, PUTRAJAYA
HASAN LAH JCA
MALIK ISHAK JCA
SYED AHMAD HELMY JCA
[CRIMINAL APPEAL NO: J-05-19-2008]

C

19 OCTOBER 2011

CRIMINAL LAW: *Murder - Defence - Insanity - Acquittal of respondent- Appeal against decision of High Court - Expert medical opinion - Whether respondent insane at time of committing murder -*

D

Whether respondent had a delusion or hallucination when committing act - Respondent underwent cardiac surgery in 1998 - Changes in personality after surgery - Whether respondent's medical history a factor to consider when he lapsed into a state of mindlessness - Whether respondent conscious of his act - Multiple injuries suffered by deceased - Motive of murder -

E

Whether established - Penal Code, ss. 84 & 302

CRIMINAL PROCEDURE: *Appeal - Appeal against acquittal - Respondent charged with murder of his sister-in law - Acquittal of respondent on ground of insanity - Whether trial judge erred in law and in fact in concluding respondent established his defence under s. 84 Penal*

F

Code - Whether decision set aside

In the High Court, the respondent was charged for the murder of his sister-in-law ('deceased') under s. 302 of the Penal Code. At the conclusion of the trial, the learned trial judge acquitted the

G

respondent on ground of insanity and he was ordered to be kept in safe custody pursuant to s. 348 of the Criminal Procedure Code. Dissatisfied with the said decision, the Public Prosecutor appealed to this court. It was the prosecution's case that the respondent's motive to kill the deceased was because there was

H

an argument between them prior to the incident as the respondent was angry with the deceased and thus, stabbed her with a knife. According to the respondent, the deceased told him that she changed her mind of joining the respondent in his business venture and an argument took place between them at his house.

I

Thereafter, the respondent got into his car with the deceased and while the respondent was driving, the deceased kept on arguing, screaming and shouting in the car. The respondent further

submitted that (i) he could not remember using any physical violence on her nor taking with him any knife and (ii) there was silence in the car as the deceased did not respond when he called her name. The defence witness, Dr Badiah ('DW3'), a forensic psychiatrist testified that the respondent was not insane at the time he was alleged to have committed the offence. However, DW3 made it clear that this unfavourable conclusion was reached based solely on the assessment of whether the respondent could have had a delusion or hallucination. In her opinion, it was not improbable in view of the respondent's medical history that he may have lapsed into a state of mindlessness as not to have been conscious of what he was doing. It was the High Court's findings, *inter alia*, that (i) the respondent had established the defence of insanity (ii) the respondent experienced change of personality after undergoing heart surgery in 1998 (iii) the respondent was not a person of an aggressive nature until he underwent the surgery when his personality changed and (iv) the respondent posed depressive symptoms after his cardiac operation. The issue for determination in this appeal was whether the learned trial judge was right in his finding that the respondent had established the defence of insanity under s. 84 Penal Code.

Held (allowing appeal; setting aside order of High Court)
Per Hasan Lah JCA delivering the judgment of the court:

(1) The medical evidence adduced through DW3 did not support the learned trial judge's finding that the respondent had established the defence under s. 84 Penal Code. DW3 merely gave a general opinion that a sudden mental blackout could happen in a patient such as the respondent in which it may in turn cause him to lose control of himself and that he may not have been conscious of what he did. DW3 however said that she could not say for certain on an observational basis whether the respondent could have had a sudden mental blackout as he was admitted after the fact. Thus, the evidence adduced by DW3 was not sufficient to establish the defence under s. 84 Penal Code that the respondent was incapable of knowing the nature of his act. (paras 33 & 34)

(2) Section 84 Penal Code deals with legal insanity. Here, the defence had not even established through medical evidence that at the time the respondent committed the act he was in a state of mindlessness. It was clear from the respondent's testimony that the deceased was stabbed and slashed with the knife while he was driving his car. Further, the fact that

A the respondent did not lose control of his car showed that he was conscious of what was happening at that time. (paras 34, 35 & 36)

(3) The multiple injuries suffered by the deceased did not support B the respondent's version that he was in a state of mindlessness. The injuries suffered by the deceased could only be inflicted by a person who was conscious of what he was doing. As such, this court was unable to agree with the finding of the learned trial judge that the prosecution had not C established the respondent's motive in killing the deceased. It could be reasonably inferred from the evidence that the respondent stabbed and slashed the deceased because he was angry with her. That was why so many injuries were inflicted on her by the respondent. (paras 37 & 38)

D **(4)** The learned trial judge had erred in law and in fact in coming to the conclusion that the respondent had established the defence under s. 84 Penal Code. As such, the prosecution had proved its case against the respondent beyond reasonable doubt. The respondent was thus convicted for the offence of E murder and sentenced to death. (para 39)

Bahasa Malaysia *Translation Of Headnotes*

Di Mahkamah Tinggi, responden telah dituduh dengan membunuh F kakak iparnya ('si mati') di bawah s. 302 Kanun Keseksaan. Pada akhir perbicaraan, yang arif hakim telah membebaskan responden atas alasan kehilangan akal dan diperintahkan supaya responden ditahan di bawah jagaan menurut s. 348 Kanun Tatacara Jenayah. Tidak puas hati dengan keputusan tersebut, pihak Pendakwa Raya G telah merayu ke mahkamah ini. Adalah kes pendakwaan bahawa motif responden untuk membunuh si mati adalah kerana terdapat perselisihan faham di antara mereka sebelum insiden itu memandangkan responden marah dengan si mati dan oleh itu, menikam beliau dengan sebilah pisau. Menurut responden, si mati H telah memberitahunya bahawa beliau telah menukar fikiran untuk masuk bersama responden di dalam perniagaannya dan suatu pertengkaran telah berlaku di antara mereka di rumah responden. Selepas itu, responden telah menaiki keretanya bersama-sama si mati dan semasa responden memandu, si mati terus bertengkar, I menjerit dan teriak di dalam kereta. Responden berhujah selanjutnya bahawa (i) beliau langsung tidak ingat melakukan sebarang kekejaman fizikal atau pun mengambil pisau bersamanya dan (ii) keadaan dalam kereta sangat senyap apabila si mati tidak

bertindak semasa responden memanggil namanya. Saksi defendan, Dr Badiah ('DW3'), seorang pakar psikiatri forensik telah memberi keterangan bahawa responden tidak hilang akal pada masa beliau dituduh melakukan kesalahan tersebut. Walaubagaimanapun, DW3 dengan jelas menyatakan bahawa kesimpulan tidak menyokong ini telah disampai hanya berdasarkan penilaian sama ada responden mungkin dalam keadaan delusi atau berkhayal. Pada pendapat DW3, ia bukannya tidak mungkin dari pandangan rekod perubatan responden bahawa beliau dalam keadaan tanpa akal dengan tidak sedar akan apa yang dilakukan olehnya. Adalah pendapatan Mahkamah Tinggi, *inter alia*, bahawa (i) responden telah membuktikan pembelaan hilang akal, (ii) responden mengalami perubahan personaliti selepas menjalani pembedahan jantung pada tahun 1998 (iii) responden bukanlah seorang yang bersifat garang sehingga menjalani pembedahan apabila personalitinya berubah dan (iv) responden menunjukkan tanda-tanda tertekan selepas menjalani pembedahan jantung. Isu untuk pertimbangan dalam rayuan ini adalah sama ada yang arif hakim perbicaraan betul dalam pendapatannya bahawa responden telah membuktikan pembelaan kehilangan akal di bawah s. 84 Kanun Keseksaan.

Keputusan (membenarkan rayuan; mengenepikan perintah Mahkamah Tinggi)

Oleh Hasan Lah HMR menyampaikan penghakiman mahkamah:

(1) Keterangan perubatan yang dikemukakan melalui DW3 tidak menyokong pendapatan yang arif hakim bahawa responden telah membuktikan pembelaannya di bawah s. 84 Kanun Keseksaan. DW3 hanya memberi pandangan umum bahawa kehilangan ingatan mental mungkin telah berlaku dalam pesakit seperti responden di mana ianya sebaliknya akan menyebabkan kehilangan kawalan dan bahawa beliau mungkin tidak sedar apa yang dilakukannya. DW3 walaubagaimanapun menyatakan bahawa beliau tidak dapat menentukan pada asas pemerhatian sama ada responden mungkin mengalami kehilangan ingatan mental secara tiba-tiba memandangkan responden telah memasuki hospital selepas itu. Oleh itu, keterangan yang dikemukakan oleh DW3 tidak memadai untuk membuktikan pembelaan di bawah s. 84 Kanun Keseksaan bahawa responden tidak mampu mengetahui sifat kelakuannya.

(2) Seksyen 84 Kanun Keseksaan adalah berkenaan hilang akal dari sisi undang-undang. Di sini, pembelaan tidak membuktikan walaupun melalui keterangan perubatan bahawa pada masa responden melakukan perbuatan itu, beliau dalam keadaan tanpa akal. Adalah jelas daripada keterangan responden bahawa si mati telah ditikam dan ditetak dengan pisau semasa responden memandu keretanya. Lagipun, fakta bahawa responden tidak hilang kawalan keretanya menunjukkan bahawa beliau sedar akan apa yang berlaku pada masa itu.

(3) Kecederaan berbilang yang dialami oleh si mati tidak menyokong versi responden bahawa beliau berada dalam keadaan kehilangan ingatan. Kecederaan yang dialami oleh si mati hanya boleh ditimpa oleh seseorang yang sedar akan apa yang dibuat olehnya. Oleh itu, mahkamah ini tidak dapat bersetuju dengan pendapatan yang arif hakim bahawa pihak pendakwaan tidak membuktikan motif responden dalam membunuh si mati. Ianya boleh disimpulkan secara munasabah daripada keterangan bahawa responden telah menikam dan menetak si mati kerana responden marah dengannya. Itulah sebabnya terdapat banyak kecederaan yang ditimpa atasnya oleh responden.

(4) Yang arif hakim khilaf dari sisi undang-undang dan fakta dalam menyimpulkan bahawa responden telah membuktikan pembelaannya di bawah s. 84 Kanun Keseksaan. Oleh itu, pihak pendakwaan telah membuktikan kesnya terhadap responden melampaui keraguan munasabah. Responden dengan itu disabit bagi kesalahan membunuh dan dihukum mati.

Case(s) referred to:
John Nyumbei v. PP [2007] 2 CLJ 509 CA ***(refd)***
Walton v. The Queen [1978] 1 All ER 542 ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 348, 342
Penal Code, ss. 84, 300, 302

For the appellant - Mohamad Abazafree Mohd Abbas DPP; AG's Chambers
For the respondent - Zahar Ngah; M/s Zahar & Partners

[Appeal from High Court, Kuala Lumpur; Criminal Trial No: 45-03-2001]

[Editor's note: For the High Court judgment, please see PP v. Arokiasamy Alphonso [2008] 3 CLJ 96.]

Reported by Kumitha Abd Majid

JUDGMENT

Hasan Lah JCA:

[1] The respondent was charged under s. 302 of the Penal Code for the murder of Ganam a/p Sinnasamy ("the deceased"). At the conclusion of the trial the learned trial judge acquitted the respondent on ground of insanity and ordered the respondent to be kept in safe custody pending the order of the Ruler of the State of Johor pursuant to s. 348 of the Criminal Procedure Code.

[2] The public prosecutor appealed against the decision. We heard the appeal and at the close of the hearing we allowed the public prosecutor's appeal. We found the respondent guilty of the offence of murder and convicted him for the offence charged. He was sentenced to death. We now give our reasons.

[3] The charge against the respondent is as follows:

> Bahawa kamu pada 19 Julai 2000, jam antara 9.30 malam hingga 11.00 malam di dalam kereta Proton Tiara No. JEL 7806, di tepi Jalan Berjaya 8, Taman Perindustrian Berjaya, Tampoi, di dalam daerah Johor Bahru, di dalam Negeri Johor Darul Ta'zim, telah melakukan kesalahan membunuh dengan menyebabkan kematian ke atas Ganam a/p Sinnasamy, No. K/P. 610826-08-5986 dan oleh yang demikian, kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

Case For The Prosecution

[4] The facts of the prosecution case as found by the learned trial judge are these. At about 10.30pm on 19 July 2000 the respondent went into Inspector Tha Na Sak's (PW8) office at the Johor Bahru police station. The respondent's shirt was stained with blood and he was shivering. When PW8 asked him why he was shivering the respondent answered that he had killed his sister-in-law.

[5] The respondent then led PW8 to a green Proton Tiara car parked outside PW8's office. Inside the car, at the front passenger seat, was the dead body of the deceased. Her head was leaning onto the side glass window of the said car. There were slashed mark on her neck and blood stains on her dress. There was a kitchen knife stained with blood at the footwell on the driver's side of the car.

[6] The respondent was arrested by PW8 on the instruction of the investigating officer, ASP James a/l Jonathan (PW9). Soon after the respondent brought a police party led by PW9 to Jalan Berjaya 8, Taman Perindustrian Berjaya, Tampoi, about 10 kilometres from the police station allegedly the place where he committed the act.

[7] Upon returning to the police station PW8 took possession of the clothing the respondent was wearing, the knife and the car which was later ascertained to belong to the respondent. The blood stain on the knife was later found by the Government chemist to be of the same group AB, as the deceased's, suggesting it was the murder weapon.

[8] The post-mortem on the deceased's body was conducted on 20 July 2000 by Dr Shahidan Mohd Noor (PW1). There were several stab and incised wounds on the deceased's body. An incised wound on front lower part of her neck severed the airway and major vessels there. According to PW1 the cause of the deceased's death was due to the incised wound on the deceased's neck.

Finding At The Close Of The Case Of The Prosecution

[9] The learned trial judge admitted the confession made by the respondent to PW8 that he killed the deceased as it was made voluntarily. It is to be noted that during the trial, learned counsel for the respondent conceded that the confession was made voluntarily without inducement, threat or promise.

[10] The learned trial judge held that there are corroborative evidence to support the respondent's confession. They are as follows:

(a) the respondent's clothing was stained with blood;

(b) the recovery of the blood-stained knife in the car; and

(c) the possession of the corpus by the respondent and its delivery to the police station.

[11] The learned trial judge found the multiple stab wounds on the body of the deceased were indicative of the fact that they could have been inflicted by the doer with the intention of causing death.

[12] The learned trial judge therefore ruled that a *prima facie* case had been proved by the prosecution against the respondent.

The Defence

[13] For the purpose of this appeal we find it necessary to set out the defence evidence in detail. The respondent gave his evidence on oath. He testified that the deceased who was his sister-in-law was staying with him and his family at house No. 30, Jalan Maju Jaya, Johor Baharu. He was then doing a business of supplying medical equipment.

[14] On 2 May 1998 he had a cardiac arrest and he underwent a coronary bypass operation. After the heart bypass he had been very stressful and had cardiac neurosis. As a result of that his ability to carry out his work had been affected.

[15] Before the year 2000 he started a company called Beyond Eng Sdn Bhd. The company was set up to market book stands which he designed himself. The deceased resigned from her job in Singapore and joined him on 19 July 2000 – the day of the incident.

[16] According to the respondent on that day itself the deceased told him that she had changed her mind of joining the respondent's venture. An argument took place between them at his house. The respondent got into his car and the deceased followed him. While the respondent was driving the deceased kept on arguing, screaming and shouting in the car.

[17] The respondent said he could not remember using any physical violence on her. He could not remember taking with him any knife when he left the house that day. He never kept a knife in his car. He only realized something had happened when there was silence in the car. He turned to look at the deceased and the deceased did not respond when he called her name.

[18] Theresama a/p Sinnasamy (DW2) was the wife of the respondent. In her testimony she confirmed the respondent's testimony that the respondent underwent a heart operation in 1998. After that operation there were changes in him. He got angry very fast, and was moody. He also got depressed.

[19] DW2 also confirmed that on 19 July 2000 there was an argument between the respondent and the deceased because the deceased did not want to participate in the respondent's business. The respondent got angry and he broke house furniture. According to DW2 the argument started at about two something in the afternoon. The respondent walked off and took the car and the deceased followed him. The respondent did not tell her where he wanted to go when he went out that night.

[20] The respondent also called Dr Badiah binti Yahya (DW3), a forensic psychiatrist attached with Hospital Permai, Johor Bahru. She testified that the respondent was admitted to her hospital on 3 August 2000, 15 days after the incident, on the order of the Magistrate for medical assessment of his sanity pursuant to s. 342 of the Criminal Procedure Code.

[21] DW3 examined the respondent on 4 August 2000 using history taking and mental and physical state examination procedures. She conducted a detailed examination of the respondent on 4 August 2000 and 8 August 2000. In the afternoon of 8 August 2000 she presented her findings at a grand ward round attended by other psychiatrists of the hospital and Dr Benjamin Chan Teck Ming, the director. They concurred with her finding that the respondent was not insane at the time he was alleged to have committed the act.

[22] DW3, however, made it clear that this unfavourable conclusion was reached based solely on the assessment on whether the respondent could have had a "delusion or hallucination" at the time he committed the act. An assessment on the other aspects within the M'Naughten rule could not be accurately conducted by reason that the respondent was only admitted to the hospital 15 days after the incident. DW3 also said that there were known medical cases of patients having fallen into such a state of mindlessness after experiencing a trauma such as after undergoing a serious surgical operation. In her opinion it is not improbable in view of the respondent's medical history that he may have lapsed into a state of mindlessness as not to have been conscious of what he was doing.

[23] Under cross-examination DW3 said the board of the ward round found that the respondent did not fulfil the criteria of s. 84 of the Penal Code, that is to say that at the time he committed the act he was of sound mind. By "sound mind" she means the

respondent had not had delusion or hallucination. DW3 further stated that they could not assess whether the respondent knew what he did was wrong as the respondent was admitted two weeks after the alleged offence.

Findings Of The Trial Judge At The Close Of The Trial

[24] In the hearing before the learned trial judge learned counsel for the respondent submitted that at the most the respondent had committed culpable homicide not amounting to murder under exception 1 and exception 4 of s. 300 of the Penal Code. The defence never submitted on the defence of insanity.

[25] The learned trial judge held that there was no evidence of grave and sudden provocation on the part of the respondent or any such altercation that had led the respondent to suddenly kill the deceased in the car. Although there were evidence of some arguments between the deceased and the respondent at the house that was not sufficient to constitute a "grave and sudden provocation" or "sudden fight in the heat of passion upon a sudden quarrel".

[26] Notwithstanding that the learned trial judge was of the view that a serious question to be considered in the instant case was whether the respondent could avail himself of the defence of legal insanity under s. 84 of the Penal Code the learned trial judge then made a finding that the respondent had established the defence of insanity.

The Appeal

[27] The only issue for our determination in this appeal is whether the learned trial judge was right in his finding that the respondent had established the defence of insanity under s. 84 of the Penal Code. The learned Deputy Public Prosecutor submitted that on the evidence adduced by the defence the respondent, on a balance of probability, failed to establish the defence of insanity. A number of cases on the defence of insanity had been referred to us by the learned Deputy Public Prosecutor to support his submission. The learned Deputy Public Prosecutor also submitted that the prosecution had established the motive for the respondent to kill the deceased as before the deceased was found murdered there was an argument between the respondent and the deceased prior to the incident as the respondent was angry with the deceased. It is further submitted that the respondent had not explained about the existence of the knife in his car.

[28] On the evidence available we agreed with the finding of the learned trial judge that the prosecution had proved a *prima facie* against the respondent on the offence charged. We also agreed with his decision to reject the defence's contention that the respondent was only guilty of culpable homicide not amounting to murder by virtue of exception 1 and 4 of s. 300 of the Penal Code.

[29] Section 84 of the Penal Code reads:

> Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

The principles of law relating to the defence of insanity have been summarised by this court in *John Nyumbei v. PP* [2007] 2 CLJ 509 at pp. 516-518:

> 11. This section exempts a person found to be insane of any criminal responsibility if it is found that he is "incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law" (see commentary in *Ratanlal and Dirajlal's Law of Crimes*, 25th edn, p 280). The learned authors there further commented that a person "is not protected if he knew that what he was doing was wrong, even though he did not know that it was contrary to law, and also, if he knew what he was doing was contrary to law even though he did not know that it was wrong.
>
> 12. Thus, under s. 84 Penal Code, criminality has to be determined according to that legal test and not merely by the mental state of an accused person according to the medical test.
>
> 13. There is a distinction between the notion of a legal insanity and medical insanity. Not every form of insanity exempts a person from criminal responsibility. Only legal insanity provides that exemption under s. 84 Penal Code. The specie of insanity addressed by s. 84 is the one that impairs the cognitive faculties of a person. Its nature and extent must be that to make the offender incapable of knowing the nature of his act, or that he is doing is wrong or contrary to law. The criminality of an act therefore must be determined by this test laid down in s. 84 as distinguished from the medical test (see *Ratanlal and Dhirajlal's Law of Crimes*, 25 edn p. 280). As was stated recently by this court through the judgment of Ariffin Zakaria JCA (as he then was) in *PP v. Muhammad Suhaimi Abdul Aziz* [2004] 1 CLJ 378:

It is settled law that the defence of insanity under s. 84 is concerned with the accused's legal responsibility at the time of the alleged offence and not with whether he was medically insane at that time. See *Pendakwa Raya v. Zainal Abidin bin Mat Zaid* [1993] 1 CLJ 147; *PP v. Misbah bin Saat* [1997] 3 MLJ 495.

14. When the defence of insanity is raised the court thus needs to consider two matters, namely:

(i) whether the accused person has successfully established, as a preliminary issue, that at the time of committing the act he was of unsound mind, and

(ii) if he was of unsound mind, whether he has proven that his unsoundness of mind was of a degree to satisfy one of the tests earlier mentioned ie, that the accused was incapable of knowing the nature of his act as being wrong or against the law. (see Ratanlal and Dhirajlal's Law of Crimes, 5th end., p. 289 et seq).

15. It is also settled law that the burden of proof rests on the person who raises the defence of insanity (see *Juraimi bin Hussein v. PP* [1998] 2 CLJ 383 also *Baharom v. PP* [1960] 26 MLJ 249). And it is only the accused person who has this right to raise a defence of insanity. It is not open to the court or the prosecution to raise it (see *PP v. Misbah bin Saat*, *supra*).

16. The standard of proof upon the accused raising the defence of insanity is on a balance of probabilities, as in a civil case (*Rajagopal v. PP* [1977] 1 MLJ 6, *Goh Yoke v. PP* [1970] 1 MLJ 63). So, if the appellant here is able to show, either from the prosecution or other evidence that he committed the crime but was at that time insane, he cannot be culpable by virtue of s. 84 Penal Code.

[30] In *Walton v. The Queen* [1978] 1 All ER 542 the Privy Council, at p. 546, said:

These cases make clear that on an issue of diminished responsibility the jury are entitled and indeed bound to consider not only the medical evidence but the evidence on the whole facts and circumstances of the case. These include the nature of the killing, the conduct of the accused before, at the time of and after it and any history of mental abnormality. It being recognized that the jury on occasion may properly refuse to accept medical evidence, it follows that they must be entitled to consider the quality and weight of that evidence. As was pointed out by Lord

A Parker CJ in *R v. Byrne*[3], what the jury are essentially seeking to ascertain is whether at the time of the killing the accused was suffering from a state of mind bordering on but not amounting to insanity. That task is to be approached in a broad common sense way.

B **[31]** On the issue of legal insanity, the learned trial judge had this to say:

In my judgment he has succeeded in discharging that burden - for the following reasons:

C His claim that he had a serious heart disease and had experienced a change of personality after undergoing heart surgery in 1998 is supported by the evidence of his wife who said he was not a person of an aggressive nature until he underwent the surgery when his personality changed.

D So is his claim of having been in that state of mindlessness supported by the expert medical opinion of Dr. Badiah. In the course of her examination of the accused, Dr. Badiah had obtained the medical notes of the accused from the Cardiothoracic Unit of the Sultanah Aminah Hospital Johor Bahru, the hospital E that treated and operated on him in 1998. She was able to confirm from the notes that the accused had a triple vessel disease, unstable angina, poor left ventricular function and left ventricular thrombus and that he underwent surgery on 9.7.1998 at that hospital. She was also able to confirm from her study of him at F Hospital Permai that he had had depressive symptoms after his cardiac operation. She said it was quite common for patients who undergo a major operation to exhibit such a symptom. In general she said that a chronic depression can cause some social, financial and marital problems and can lead to a tendency to consume alcohol as a means of overcoming the symptoms. A patient who G is depressed can easily be angered and become very sensitive and can exhibit an impulsive behavior and suicidal tendency. In the case of the accused, she was of the opinion that it was probable for him to be angry and to have mood swings. She could not say for certain on an observational basis whether in this case the H accused can have a sudden mental blackout as he was admitted 15 days after the fact. She did say however that generally such a blackout can happen in a patient such as the accused in which may in turn cause him to lose control of himself that he may not have been conscious of what he did.

I

The prosecution could have called rebuttal evidence to rebut Dr. Badiah's opinion but it did not. The question of whether the accused has successfully discharged the burden of proving that he was legally insane at the time he committed the act would therefore have to be determined mainly from the medical opinion of Dr. Badiah.

...

In the absence of any evidence in rebuttal in the instant case I am left only with the expert opinion of Dr. Badiah to consider. It is true her opinion on this point is at best empirical in the sense that it is given on a fairly general basis and is unsupported by case studies. Nonetheless Dr. Badiah is an expert in her field having undergone specialized training overseas before becoming a forensic psychiatrist at the renowned mental hospital where she practiced. I accept her evidence that it was probable for the accused to have fallen into such a state of mindlessness when he committed the act.

Further, there is an absence of a motive as to why the accused would want to kill the deceased in this case. He had denied in cross-examination that the deceased was his lover and that he had killed her because she was leaving him to marry another person from Singapore. Indeed no evidence of such a relationship was ever adduced before the court. The absence of motive or the lack of it was held by the Federal Court in *Yeo Ah Seng v. Public Prosecutor* [1967] 1 MLJ 231 at p. 233 to constitute "an important indication of insanity which ought to be brought to the attention of the jury." The finding was followed more recently by the Court of Appeal in *PP v. Muhamad Suhaimi Abdul Aziz* [2004] 1 CLJ 378. In agreeing with the decision of the High Court in finding the accused insane, the court held (per Ariffin Zakaria JCA, as he then was), that "in the absence of any rational motive on the part of the accused in killing his wife coupled with the unchallenged medical evidence, we hold that the learned judge was justified in coming to his decision."

A crucial issue that I have to address is the question of whether the unexplained possession of the knife in the hands of the accused should degrade or demolish altogether his claim of being in a state of mindlessness - for had there been some evidence that he had taken that knife into the car or been in possession of it immediately before the event such an occurrence may well have led me to find that there was a pre-meditation of the murder whereby it can be forcefully argued that he could not have been in that state of mindlessness when he committed the act. But no

A such evidence was proffered. I accept Mr. Fernandez's submission that it was equally probable that the deceased herself could have by stealth been in possession of that knife before the event and that it would be wrong to draw any inference of pre-meditation against the accused.

B **[32]** It must be noted that DW3, in her evidence, had said under cross-examination that the board of the ward found that the respondent did not fulfil the criteria of s. 84 of the Penal Code, that is to say that at the time he committed the offence he was of sound mind. By 'sound mind' DW3 meant the respondent did C not have delusion or hallucination. DW3 also stated that the board could not assess whether the respondent knew what he did was wrong as the respondent was admitted two weeks after the alleged offence.

D **[33]** With respect, the medical evidence as adduced through DW3 did not, in our view, support the learned trial judge's finding that the respondent had established the defence under s. 84 of the Penal Code. DW3 merely gave a general opinion that a sudden mental blackout could happen in a patient such as the E respondent in which it may in turn cause him to lose control of himself and that he may not have been conscious of what he did. DW3 however, clearly said that she could not say for certain on an observational basis whether in this case the respondent could have a sudden mental blackout as he was admitted after the fact.

F **[34]** In our view the evidence adduced by the defence through DW3 was not sufficient to establish the defence under s. 84 of the Penal Code that the respondent was incapable of knowing the nature of his act. There was therefore nothing for the prosecution G to rebut DW3's evidence. As stated earlier s. 84 of the Penal Code deals with legal insanity. Here, the defence had not even established through the medical evidence that at the time the respondent committed the act he was in a state of mindlessness.

H **[35]** From the respondent's testimony it was clear that the deceased was stabbed and slashed with the knife while the respondent was driving his car. This is what the respondent said in his evidence (p. 78 of the Appeal Record):

I I got into the car and she said she followed me as a passenger in my car. I do not know where I took her. While I was driving she kept on arguing - screaming and shouting in the car - windows up.

I cannot remember using any physical violence on her. A

I cannot remember taking with me any knife when I left the house. I never keep a knife in my car for protection.

I only realized something had happened to her when there was silence in the car. I turned to look at her. She was not responding when I called her name. B

[36] We found it difficult to believe his version. If he was really not aware of what was going on at that time why did he not lose control of his car as he was driving at that time? The fact that he did not lose control of his car shows that he was conscious of what was happening at that time. C

[37] Furthermore, we are of the view that the multiple injuries suffered by the deceased did not support the respondent's version that at that time he was in a state of mindlessness. From the post-mortem report (D20) and the evidence of PW1, the deceased suffered the following injuries: D

(a) incised wound 3 x 0.5cm and 2cm deep on dorsum base of left thumb; E

(b) incised wound 5.5 x 1.5cm and 1cm deep on outer lower one-third of left forearm;

(c) incised wound 10 x 2.5cm and 4cm deep on back of left arm; F

(d) stab wound 3 x 1.5cm and 7cm deep on upper left chest its inner end 3cm above the nipple. It was directed downwards and to the right;

G

(e) stab wound composite 8cm one edge the other 3.5cm plus 3cm and 2cm wide near the centre of chest 5.5cm below suprasternal notch and 11cm deep directed downwards and to the right;

(f) stab wound 3.5 x 0.5cm and 6cm deep obliquely placed on the lower neck to the left suprasternal notch; H

(g) incised wound 9cm gaped 2.5cm and 4cm deep on front lower neck and 2cm above the suprasternal notch evenly placed its left end higher than the right. It severed the trachea, right common carotid artery with other vessels and exposed the apical region of right lung; I

A (h) superficial incised wound 1.5 x 0.5cm on inner right clavicle; and

(i) superficial incised wound 3 x 0.5cm on upper right arm near underarm.

B **[38]** Such injuries, in our view, could not be inflicted by a person who was in a state of mindlessness. They could only be inflicted by a person who was conscious of what he was doing. We are also unable to agree with the finding of the learned trial judge that the prosecution had not established the motive on the part of the C respondent in killing the deceased. The respondent and the deceased had an argument. Even while they were inside the car they were arguing. The reason for the argument was that the deceased wanted to withdraw from the venture started by the respondent on the first day the venture commenced. The D respondent had put in all his savings into this business. DW2 said in her evidence that the respondent was angry when the deceased told the respondent that she wanted to back out from participating in the venture. According to DW2 the respondent broke house furniture. We are therefore of the view that it can E be reasonably inferred from the evidence that the respondent stabbed and slashed the deceased because he was angry with her. That was why so many injuries were inflicted on the deceased by the respondent.

F **[39]** For the reasons given we found that the learned trial Judge had erred in law and in fact in coming to the conclusion that the respondent had established the defence under s. 84 of the Penal Code. We were satisfied that the prosecution had proved its case against the respondent beyond reasonable doubt. We therefore G allowed the public prosecutor's appeal. The order of the learned trial judge was set aside and in substitution thereof the respondent was convicted of the offence of murder and sentenced to death.

H

I